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OFFICE OF PETITIONS

In re Application of
Zoller et al. :
Application No. 10/725,037 : DECISION ON PETITION
Filing Date: 2 December, 2003 :
Attorney Docket No. 100337.54074D4 :

This is a decision on the petition filed on 12 October, 2004, and considered under 37 C.F.R. §1.53, to obtain a filing date of 2 December, 2003, for Fig. 10B as described in the specification.

The petition is **DISMISSED**.

BACKGROUND

This nonprovisional application was deposited on 2 December, 2003.

On 9 August, 2004, the Office mailed a "Notice to File Missing Parts in a Nonprovisional Application" (the 9 August Notice), which included a Notice of an omitted item, and indicated that, while a filing date had been granted, it appeared that Fig. 10B as described in the specification was omitted from the application.

The 9 August Notice informed Petitioner of three alternative responses to the Notice: (a) to contend that the materials had been submitted, providing evidence thereof and a copy of the materials; (b) to submit the omitted materials and accept the date of submission as the date of the application; or (c) to ignore the 9 August Notice and accept the application as filed.

Petitioner filed the instant petition (with fee) on 12 October, 2004, with, *inter alia*, a statement of events indicating that Fig. 10B was indeed deposited on filing, and that it was but one of several

panels (*i.e.*, A - L) on the same sheet of drawings heretofore identified as Fig. 10 (“ . . . [e]ach of these panels are (sic) clearly identified and described at paragraph 0263 of the as-filed specification. * * * 12 panels *should* have been labeled as Panels A through L on the single page Figure 10”(emphasis supplied)); and a preliminary amendment accompanied by 15 sheets of drawings. Petitioner apparently submitted no copy of a receipt card date stamped by OIPE upon deposit on 2 December, 2003. And Petitioner submitted an additional single sheet of drawings again labeled only Fig. 10.

Analysis

A search of the official file reveals that on 2 December, 2003, Petitioner deposited the instant application, and the file presently contains fifteen sheets of drawings, to wit:

- Fig 1;
- Fig. 2;
- Figs. 3a, 3b;
- Fig. 4;
- Figs. 5, 6;
- Fig. 7;
- Figs. 3c (sic), 8c (sic);
- Figs. 8a, 8b;
- Figs. 9a, 9B;
- Fig. 10;
- Figs. 11, 12;
- Fig. 13;
- Fig. 14;
- Fig. 15;
- Figs. 16a, 16b

Figure 10 appears to contain 12 panels, which Petitioner contends “should have been labeled as Panels A - L”

But they were not so labeled by Petitioner before filing..

Now Petitioner seeks entry of the amendment via petition. However, entry—or not—of amendment is the province of the Examiner.

Petitioner has filed her amendment and set forth her reasons and argument in support therefor.

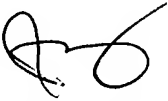
The Examiner shall review, during the examination process, the sufficiency of the corrections made to the “Formal version of Figure 10”—as Petitioner describes it—as it relates to the corrected description submitted in the “Second Preliminary Amendment.”

CONCLUSION

The petition is **dismissed**. Because neither the matter herein nor the petition was occasioned by Office error, the petition fee will not be refunded.

This file (Image File Wrapper (IFW)) is released to OIPE for further processing consistent with this decision before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.

A handwritten signature in black ink, appearing to read 'J. Gillon', with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions